

The Texas Natural Resource Conservation Commission (commission) adopts revisions to the State Implementation Plan (SIP) concerning the Northeast Texas Flexible Attainment Region. The revised SIP would make certain local ozone precursor emission reductions federally enforceable.

Explanation of the Adopted SIP

The revised SIP would make certain local ozone precursor emission reductions federally enforceable. Four affected companies in the Northeast Texas region voluntarily agreed to be subject to the implementation of enforceable emission reduction measures pursuant to Part A, Sections 2 - 5 of the Northeast Texas Flexible Attainment Region Memorandum of Agreement.

Hearing and Commenters

A public hearing was held in Longview on January 7, 1999 and the public comment period closed on January 7, 1999. The following commenters provided testimony at the hearing regarding the SIP: Northeast Texas Air Care (NETAC) Policy Committee, Texas Utilities (TU), Texas Campaign for the Environment (TCE), East Texas Communities Network (ETCN), City of Longview/NETAC, Sustainable Energy and Economic Development Coalition (SEED), and four individuals. In addition to oral comments, written comments were submitted by the United States Environmental Protection Agency (EPA) and a collective group which included the ETCN, the Environmental Defense Fund (EDF), the Lone Star Chapter of the Sierra Club, the American Lung Association of Texas, the Public Citizen of Texas, the SEED, the TCE, the Galveston-Houston Association for Smog Prevention, and two NETAC committee members (collective group referred to as commenters).

Evaluation of Testimony

The NETAC Policy Committee and TU spoke in favor of incorporating the Agreed Orders into the SIP and recommended its adoption. The EPA commented that the measures addressed in the Agreed Orders for inclusion into the SIP were a very important step toward addressing the ozone problem in Northeast Texas and that continued emission reductions through enforceable conditions is an integral step in continuing to improve air quality for the region.

The commission agrees that this SIP revision is an important step toward improving the air quality in the Northeast Texas area.

The EPA requested additional documentation to quantify the emission reductions described in the Agreed Orders.

The commission agrees to provide additional information regarding the emission reductions offered by the companies as outlined in the Agreed Orders. The documentation has been included as Appendix C in the SIP.

The EPA requested that the entire emissions inventory support document be included as part of the final SIP revision.

The emissions inventory entitled “Tyler/Longview/Marshall Flexible Attainment Region Emission Inventory Ozone Precursors, VOC and NO_x 1995 Emissions” is included in the SIP as

Appendix B. Commission staff will provide EPA with a copy of the appendixes.

The commenters referred to a statement in the SIP executive summary which stated that the only entities affected by the revised SIP were the companies that voluntarily agreed to implement enforceable emission reductions and pointed out that those truly affected by this action were the members of the public in the Northeast Texas region.

The reference to affected entities in the executive summary focuses on the local companies that are committing to the emission reductions. However, the commission agrees that the overall affected public includes the citizens of the Northeast Texas region as well as the companies involved in the Agreed Orders. The executive summary has been changed to reflect this.

The commenters questioned the citation in the SIP of §382.017 of the Texas Health and Safety Code as the legal basis for the SIP revision and suggested that §382.012 be used instead.

The executive summary of the SIP cites §382.023 (Orders) as the legal authority of revising the SIP and not §382.017 (Rules) as suggested by the commenters. However, upon further consideration, the commission concurs that the correct citations should be §§382.011 (General Powers and Duties), 382.012 (State Air Control Plan), and 382.023 (Orders). The executive summary has been changed to reflect this.

The commenters stated that members of the public were not allowed to participate in the Flexible Attainment Region (FAR) negotiations and that a summary in the SIP narrative neglected to explain that as well as failed to explain that two members of the public were added to the NETAC Policy Committee subsequent to the adoption of the FAR. The commenters also stated that the public should have adequate opportunity in giving input toward decisions about future emission reductions. The City of Longview and NETAC stated that there were a number of opportunities for public input during the time that the FAR was being developed and that the NETAC Policy Committee was made up of several elected public officials who represented the people.

The commission firmly upholds the belief and practice of including any interested person in public meetings and in the development of regulations and/or policy. The NETAC Policy Committee was responsible for the development of the FAR and provided the opportunity for public input through public meetings and through public elected officials who sit on the Policy Committee. The commission does not agree that a reference to the lack of public participation in the negotiation of the FAR and changes in the membership subsequent to the development of the FAR should be included in the SIP narrative.

The commenters stated that the emission reductions outlined in the FAR did not equal the reductions in the Agreed Orders which appeared in the SIP.

Based on the information provided by the affected companies and calculations made by the Office of Air Quality's New Source Review (NSR) staff, the commission determined that the correct

amount of emissions is included in the Agreed Orders. Further documentation concerning the quantification of these numbers is contained in Appendix C of the SIP.

The commenters stated that there was a discrepancy in the emissions inventory between what was reported in the FAR and what was reported in the SIP.

The FAR contains emission estimates for the Northeast Texas area compiled by the NETAC organization. As an attainment area, the Northeast Texas region has never been required to develop an emissions inventory and the emission estimates in the FAR are based on a variety of factors available at the time the agreement was drafted. The revised SIP contains the first comprehensive emissions inventory for the region, which uses 1995 as the base year (see Appendix B). The development of a comprehensive emissions inventory is significant and should be considered more accurate than the estimates provided in the FAR.

The commenters stated that while the FAR implied that the emission reductions were permanent, the Agreed Orders stated that the emission reductions expired in September 2001.

The FAR agreement is for a term of five years, to expire in September 2001 unless extended by the parties. The emission reductions as outlined in the Agreed Orders of the FAR are permanent reductions. The commission has no reason to believe that the companies will remove new equipment or control equipment, or discontinue control measures in place. It is true that the amount of reductions from ARCO's sulfur recovery units are decreasing as total gas emissions

and gas production decrease. Several of the reduction measures can be changed only by making a change to a permit unit which requires commission review.

The commenters stated that it was difficult to understand how reductions, referred to in the Agreed Orders as “approximate” or “estimated,” could be enforceable.

The emission reductions voluntarily offered by the affected companies as contained in the Agreed Orders are correct. The amount of the reductions are based on information provided by the affected companies reviewed and calculations made by the Office of Air Quality’s NSR staff. Further documentation concerning the quantification of these numbers is contained in Appendix C of the SIP.

The commenters stated that they were disturbed that the commission did not adhere to the implementation deadline as outlined in the FAR.

The FAR was ratified on September 16, 1996 and the commission moved expeditiously to approve the Agreed Orders, which occurred on May 28, 1997 and June 25, 1997. The voluntary emission reductions in the Agreed Orders were enforceable by the state upon commission approval.

The commenters stated that the SIP summary failed to detail the entire history of ozone exceedances in the region for 1997 and 1998.

This SIP outlines events that occurred up through the development of the FAR in September 1996.

Due to further ozone exceedances at the Gregg County ambient air quality monitor in 1998, the FAR requires that additional enforceable emission reductions be made as outlined in the FAR action plan and be included in the SIP. That future SIP revision will incorporate the events that occurred after the FAR was initially developed and, therefore, will not be addressed in this SIP.

An individual stated that the commission and the EPA were trying to take away the public's right to speak and that the agencies didn't want the comments of the public made known.

The commission disagrees with the commenter that the state and federal environmental agencies are against the public's right to speak and give input. Input from the public is well established in the regulatory process and public hearings, such as this one, are designed to take the input of all participating parties.

An individual stated that trees were not the problem and that even if the naturally occurring emissions from trees could be removed, you would still have ozone. The TCE stated that it is important to have an accurate emissions inventory and that volatile organic compounds (VOCs) from biogenic emissions from the five-county area were needed to help understand the problem. SEED cited the effects of exposure to ozone and stated that since trees are a huge source that contribute to the formation of ozone, it means that nitrogen oxides (NO_x) emission reductions needed to be addressed.

The commission recognizes that the VOC component in biogenic emissions are a contributing factor in the formation of ozone. Studies on biogenic emissions in the Northeast Texas area have recently been conducted and the information will be used to develop a more accurate emissions inventory and future photochemical modeling. Future modeling results will be used to determine the role between VOCs and NO_x, as well as to determine the types of control strategies needed to reduce ground level ozone.

An individual showed a videotape of two alleged upsets that occurred near his home at the Texas Eastman plant. He commented about the emissions as well as chemical tests on air samples that were collected from his home.

While the commission is interested in the information presented in the video of the industrial emissions, the information is not pertinent to this SIP revision and will not be addressed here.

An individual stated that one of the biggest problems with industries was that the state allowed them to police themselves.

The commission disagrees with the commenter and asserts that industries do not solely police themselves. Industries are subject to a wide variety of environmental rules and regulations. In addition, the commission has 16 regional field offices with trained inspectors who make mandatory inspections. Notices of Violation are issued to companies not complying with environmental rules and regulations.

ETCN stated that the recent development of future emission reductions offered by local industry was very insignificant and that there was no way of knowing whether these were new emission reductions or emissions from the previous round of reductions.

The TU stated that it had recently announced voluntary NO_x reductions at its Martin Lake facility in support of NETAC's effort improve air quality.

Due to ozone exceedances in 1998, a future SIP revision will address the emission reductions that will be made enforceable pursuant to the action plan outlined in the FAR agreement. The commission appreciates the voluntary emission reductions offered by TU and other local companies in the Northeast Texas area. However, these comments are not relative to this action and will be addressed in a future SIP revision.

The commenters stated that certain VOC reductions in the FAR were made prior to the exceedances of the ozone NAAQS in 1995 and, therefore, would not improve the air quality from the 1995 levels.

The commission concurs that certain emission reductions were made prior to the 1995 ozone exceedances. However, the EPA approved the emission reductions with the provision that the voluntary reductions be made enforceable through the use of Agreed Orders and that further reductions would need to be made if the air quality in the region did not improve.

SEED commented about grandfathered sources and how they are not required to install the most modern equipment.

Grandfathered facilities are industrial units that were in existence prior to the establishment of the state's permitting requirements in 1971. These units are exempt from the controls that more modern units must have. The commission points out that the state legislature is currently evaluating a program that is designed to encourage companies in Texas to voluntarily place their grandfathered units into the state's air permitting program. Participation in the program has been very good and the legislature is likely to complete its review of the program during the 76th legislative session.

The commenters stated that they did not object to the inclusion of the Agreed Orders in which certain companies agreed to reduce emissions in the Northeast Texas area. The commenters, however, objected to the inclusion of the FAR into the SIP because there was no legal authority for the FAR and the FAR violated the Federal Clean Air Act (FCAA). In addition, the commenters stated that a nonattainment designation would have brought certain benefits and assurances such as more appropriate emissions controls, transportation planning, and quantified targets of emissions reductions. SEED stated that the FAR process was being used to delay and put off any serious restrictions that the industries would have to come under and that the commission was keeping the EPA from imposing stricter pollution limits.

The commenters stated that the use of the FAR has delayed improving or even stabilizing air quality in the region.

The commenters stated that the VOC emission reduction strategy in the FAR was based on the wrong premise and that local major industrial sources need to make significant NO_x reductions in order to clean up the air and prevent future violations of the ozone National Ambient Air Quality Standards (NAAQS) in the Northeast Texas region. The TCE stated that clean air is everyone's responsibility and that it was time that industry carried their fair share of the burden because they were a major contributor of ozone.

The commenters stated that the voluntary emissions reductions made in the region were meaningless because no emissions cap or offsets were established in the FAR to control future growth.

An individual stated that the FAR did not address health issues, was voluntary, and was not binding.

The FAR is a mechanism that the EPA has allowed certain counties to use in order to give local control measures a chance to work prior to the EPA issuing a call for a SIP revision or nonattainment redesignation. The FCAA does not prohibit FARs, nor does adoption of Agreed Orders developed pursuant to the FAR into the SIP preclude the EPA from designating the area as nonattainment if local control measures fail to improve the air quality within the timeframe of the agreement. The purpose of this SIP revision is to make the voluntary emission reductions that are included in the Agreed Orders federally enforceable by including them in the SIP. The FAR

itself is not included as a SIP provision, rather this mechanism is used to include specific provisions in the SIP (emissions inventory, Agreed Orders). The above comments specifically address issues regarding the concept of the FAR, such as its legal authority, its delay in improving clean air, its not addressing health issues, and its selection and timing of emission reductions. While the commission is aware of these concerns, these comments regarding the concept of the FAR fall outside the purview of this SIP revision and therefore will not be addressed in this SIP.